

31A-37a-101. Title.

This chapter is known as the "Special Purpose Financial Captive Insurance Company Act."

Enacted by Chapter 302, 2008 General Session

31A-37a-102. Definitions.

(1) For purposes of this chapter:

(a) "Ceding insurer" means an insurer that:

(i) is approved by the commissioner;

(ii) is licensed or otherwise authorized to transact the business of insurance or reinsurance in the insurer's state or country of domicile; and

(iii) cedes risk to a special purpose financial captive insurance company pursuant to a reinsurance contract.

(b) Notwithstanding Section 31A-27a-102, "insolvency" or "insolvent" for purposes of applying Chapter 27a, Insurer Receivership Act, to a special purpose financial captive insurance company, means that a special purpose financial captive insurance company:

(i) is unable to pay an obligation when the obligation is due, unless the obligation is the subject of a bona fide dispute; or

(ii) fails to meet the criteria and conditions for solvency of the special purpose financial captive insurance company established by the commissioner by rule or order.

(c) (i) "Insurance securitization" means a transaction or a group of related transactions:

(A) that may include a capital market offering;

(B) that is effected through one or more related risk transfer instruments and facilitating administrative agreements;

(C) where all or part of the result of the transaction or group of related transactions is used to fund the special purpose financial captive insurance company's obligations under a reinsurance contract with a ceding insurer;

(D) by which:

(I) proceeds are obtained by a special purpose financial captive insurance company, directly or indirectly, through the issuance of one or more securities by the special purpose financial captive insurance company or another person; or

(II) a person provides one or more letters of credit or other assets for the benefit of the special purpose financial captive insurance company if the commissioner authorizes the special purpose financial captive insurance company to treat the letter of credit or asset as an admitted asset for purposes of the special purpose financial captive insurance company's annual report; and

(E) if all or a part of the proceeds, a letter of credit, or asset described in this Subsection (1)(c) is used to fund the special purpose financial captive insurance company's obligations under a reinsurance contract with a ceding insurer.

(ii) "Insurance securitization" does not include the issuance of a letter of credit for the benefit of the commissioner to satisfy all or part of the special purpose financial captive insurance company's capital and surplus requirements under Section 31A-37a-302.

- (d) "Management" means:
- (i) a board of directors of a special purpose financial captive insurance company;
 - (ii) a managing board of a special purpose financial captive insurance company;
- or
- (iii) one or more individuals with the overall responsibility for the management of the affairs of the special purpose financial captive insurance company, including:
 - (A) an officer elected or appointed to act on behalf of the special purpose financial captive insurance company; or
 - (B) an agent elected or appointed to act on behalf of the special purpose financial captive insurance company.
- (e) "Organizational document" means:
- (i) in the case of a special purpose financial captive insurance company formed as a stock corporation, the special purpose financial captive insurance company's:
 - (A) articles of incorporation; and
 - (B) bylaws; and
 - (ii) in the case of a special purpose financial captive insurance company formed as a limited liability company, the special purpose financial captive insurance company's:
 - (A) articles of organization or certificate of organization; and
 - (B) operating agreement.
- (f) "Reinsurance contract" means a contract between a special purpose financial captive insurance company and a ceding insurer pursuant to which the special purpose financial captive insurance company agrees to provide reinsurance to the ceding insurer for risks associated with the ceding insurer's insurance or reinsurance business.
- (g) "Security" means:
- (i) a security as defined in Section 31A-1-301; or
 - (ii) one or more of the following that the commissioner designates, by rule or order, as a "security" for purposes of this chapter:
 - (A) a debt obligation;
 - (B) equity;
 - (C) a surplus certificate;
 - (D) a surplus note;
 - (E) a funding agreement;
 - (F) a derivative; or
 - (G) another financial instrument.
- (h) "Special purpose financial captive insurance company" means a captive insurance company has a certificate of authority under this chapter from the commissioner to operate as a special purpose financial captive insurance company pursuant to this chapter.
- (i) "Special purpose financial captive insurance company security" means:
 - (i) a security issued by a special purpose financial captive insurance company;
- or
- (ii) a security issued by a third party, the proceeds of which are obtained directly or indirectly by a special purpose financial captive insurance company.
- (j) "Surplus note" means an unsecured subordinated debt obligation that has

one or more characteristics that are consistent with paragraph 3 of the National Association of Insurance Commissioners Statement of Statutory Accounting Principles No. 41, as amended from time to time and as modified or supplemented by rule or order of the commissioner.

(2) The terms defined in Section 31A-37-102 shall have the same meaning for purposes of this chapter.

Amended by Chapter 412, 2013 General Session

31A-37a-103. Applicable law.

(1) (a) A special purpose financial captive insurance company is subject to:

(i) this chapter; and

(ii) Chapter 37, Captive Insurance Companies Act.

(b) If there is a conflict between this chapter and Chapter 37, this chapter controls.

(2) A special purpose financial captive insurance company is subject to a rule made under Section 31A-37-106 that is in effect on or after May 5, 2008.

(3) The commissioner may, by order, exempt a special purpose financial captive insurance company from a provision of Chapter 37 or a rule made under Section 31A-37-106 if the commissioner determines that the application of the provision or rule is inappropriate on the basis of the special purpose financial captive insurance company's plan of operation.

Enacted by Chapter 302, 2008 General Session

31A-37a-104. Reporting -- Books and records.

(1) For purposes of Section 31A-37-501:

(a) the commissioner shall, by rule or order, establish the form and content of the annual report to be filed by a special purpose financial captive insurance company; and

(b) a special purpose financial captive insurance company shall report:

(i) using statutory accounting principles, unless the commissioner requires, approves, or accepts the use of a generally accepted accounting principle; and

(ii) with an appropriate or necessary modification or adaptation of the statutory or generally accepted accounting principle:

(A) required, approved, or accepted by the commissioner; and

(B) as supplemented by additional information required by the commissioner.

(2) (a) A special purpose financial captive insurance company may make written application to file its annual report on a fiscal-year basis.

(b) If an alternative reporting date is granted, the commissioner shall establish the due date and content of the filing required by the special purpose financial captive insurance company in addition to its annual report.

(3) (a) Unless the commissioner approves a variance before the special purpose financial captive insurance company implements the variance, a special purpose financial captive insurance company shall maintain in the state the following of the special purpose financial captive insurance company:

- (i) a book;
 - (ii) record;
 - (iii) a document;
 - (iv) an account;
 - (v) a voucher; or
 - (vi) an agreement.
- (b) A special purpose financial captive insurance company shall make an item listed in Subsection (3)(a) available for inspection by the commissioner at any time.
- (c) A special purpose financial captive insurance company shall keep an item listed in Subsection (3)(a) in a manner so that:
- (i) the special purpose financial captive insurance company's financial condition, affairs, and operations can be readily ascertained; and
 - (ii) the commissioner may readily:
 - (A) verify a financial statement of the special purpose financial captive insurance company; and
 - (B) determine the special purpose financial captive insurance company's compliance with this chapter and Chapter 37, Captive Insurance Companies Act.
- (4) (a) Unless the commissioner approves a variance before the special purpose financial captive insurance company implements the variance, a special purpose financial captive insurance company shall preserve and keep an item listed in Subsection (3)(a) available in this state:
- (i) for the purpose of examination and inspection; and
 - (ii) until the commissioner approves the destruction or other disposition.
- (b) If the commissioner approves the keeping of an item listed in Subsection (3)(a) outside this state, the special purpose financial captive insurance company shall maintain a complete copy of the original in the state.
- (c) An item listed in Subsection (3)(a) may be photographed, reproduced on film, or stored and reproduced electronically.

Enacted by Chapter 302, 2008 General Session

31A-37a-105. Transition.

- (1) (a) Except as otherwise determined by the commissioner, a captive insurance company that on May 5, 2008 has a certificate of authority from the commissioner pursuant to Chapter 37, Captive Insurance Companies Act, and engages in insurance securitization:
- (i) is subject to this chapter as a special purpose financial captive insurance company; and
 - (ii) is considered to have a certificate of authority issued under this chapter.
- (b) The commissioner may require a captive insurance company described in Subsection (1)(a) to take an action that the commissioner determines is reasonably necessary to bring the captive insurance company into compliance with this chapter.
- (2) The commissioner may issue an order described in Section 31A-37a-201 with respect to a captive insurance company described in Subsection (1)(a) if the captive insurance company is not in compliance with this chapter.

Enacted by Chapter 302, 2008 General Session

31A-37a-201. Certificate of authority requirements.

(1) A person may not reinsure the risks of a ceding insurer unless the person has a certificate of authority under this chapter as a special purpose financial captive insurance company.

(2) To apply for a certificate of authority under this chapter as a special purpose financial captive insurance company, a special purpose financial captive insurance company shall submit an application for the certificate of authority that, in addition to complying with Chapter 37, Captive Insurance Companies Act, complies with the following:

(a) A special purpose financial captive insurance company shall submit to the commissioner a plan of operation that includes:

(i) a complete description of:

(A) a significant transaction including:

(I) reinsurance;

(II) a reinsurance security arrangement;

(III) an insurance securitization; or

(IV) a transaction or arrangement related to a transaction described in Subsections (2)(a)(i)(A)(I) through (III);

(B) to the extent not included in Subsection (2)(a)(i)(A), a party other than the special purpose financial captive insurance company and the ceding insurer that is involved in the issuance of a special purpose financial captive insurance company security; and

(C) a pledge, hypothecation, or grant of a security interest in:

(I) an asset of the special purpose financial captive insurance company; or

(II) stock or a limited liability company interest in the special purpose financial captive insurance company;

(ii) the source and form of the special purpose financial captive insurance company's capital and surplus;

(iii) the proposed investment policy of the special purpose financial captive insurance company;

(iv) a description of an underwriting, reporting, and claims payment method by which losses covered by a reinsurance contract are reported, accounted for, and settled;

(v) pro forma balance sheets and income statements illustrating one or more adverse case scenarios, as determined under criteria required by the commissioner, for the performance of the special purpose financial captive insurance company under a reinsurance contract; and

(vi) the proposed rate and method for discounting reserves, if the special purpose financial captive insurance company is requesting authority to discount its reserves.

(b) The special purpose financial captive insurance company shall submit an affidavit:

(i) of the following of the special purpose financial captive insurance company:

(A) president;

- (B) vice president;
- (C) treasurer; or
- (D) chief financial officer; and

(ii) that includes the following statements, to the best of knowledge and belief of the person submitting the affidavit after reasonable inquiry:

(A) the proposed organization and operation of the special purpose financial captive insurance company complies with this chapter and the applicable provisions of Chapter 37, Captive Insurance Companies Act;

(B) the special purpose financial captive insurance company's investment policy reflects and takes into account:

(I) the liquidity of assets; and

(II) the reasonable preservation, administration, and management of those assets with respect to the risks associated with:

(Aa) a reinsurance contract; and

(Bb) an insurance securitization transaction; and

(C) the following comply with this chapter:

(I) a reinsurance contract; and

(II) an arrangement for securing an obligation of the special purpose financial captive insurance company under the reinsurance contract, including an agreement or other documentation to implement the arrangement.

(c) A special purpose financial captive insurance company shall submit to the commissioner:

(i) a copy of an agreement or documentation described in Subsection (2)(b), unless otherwise approved by the commissioner; and

(ii) a statement or document required by the commissioner to evaluate the special purpose financial captive insurance company's application for a certificate of authority.

(d) (i) Subject to Subsection (2)(d)(ii), a special purpose financial captive insurance company shall submit with the application an opinion of a licensed attorney, in a form acceptable to the commissioner, that:

(A) the offer and sale of a special purpose financial captive insurance company security complies with:

(I) the registration requirements of federal securities laws; or

(II) the exemptions from or exceptions to a requirement of the federal securities laws; and

(B) the offer and sale of a security by the special purpose financial captive insurance company complies with:

(I) the registration requirements of this state's securities laws; or

(II) the exemptions from or exceptions to a requirement of this state's securities laws.

(ii) A special purpose financial captive insurance company is not required to submit an opinion described in Subsection (2)(d)(i) with an application if the special purpose financial captive insurance company includes a specific statement in its plan of operation that the opinion described in Subsection (2)(d)(i) will be provided to the commissioner before the offer or sale of a special purpose financial captive insurance company security.

(3) (a) The commissioner may issue a certificate of authority to a special purpose financial captive insurance company that complies with Subsection (2) authorizing the special purpose financial captive insurance company to transact reinsurance business as a special purpose financial captive insurance company in this state if the commissioner finds that:

(i) the proposed plan of operation provides for a reasonable and expected successful operation;

(ii) the terms of the reinsurance contract or related transaction comply with this chapter;

(iii) the proposed plan of operation is not hazardous to a ceding insurer; and

(iv) subject to Subsection (3)(b), the insurance regulator of the state of domicile of a ceding insurer has notified the commissioner in writing or otherwise provided assurance satisfactory to the commissioner that the regulator of the state has approved or has not disapproved the transaction.

(b) Notwithstanding Subsection (3)(a)(iv), the commissioner may issue a certificate of authority to a special purpose financial captive insurance company if the insurance regulator of the state of domicile of a ceding insurer does not respond with respect to all or a part of the transaction.

(c) (i) A certificate of authority issued under this section is valid through the June 30 after the day on which the certificate of authority is issued.

(ii) A special purpose financial captive insurance company may renew its certificate of authority annually by, before the certificate of authority expires:

(A) submitting the affidavit required by Subsection (2); and

(B) paying a renewal fee.

(4) In conjunction with issuing a certificate of authority to a special purpose financial captive insurance company, the commissioner may issue an order that includes a provision, term, or condition regarding the organization, issuance of a certificate of authority, and operation of the special purpose financial captive insurance company that:

(a) the commissioner considers appropriate; and

(b) is not inconsistent with this chapter and Chapter 37, Captive Insurance Companies Act.

Enacted by Chapter 302, 2008 General Session

31A-37a-202. Revocation, suspension, amendment, or modification of a certificate of authority.

Except as provided in Sections 31A-37a-501 and 31A-37a-502, the commissioner may not revoke, suspend, amend, or modify a certificate of authority issued to a special purpose financial captive insurance company under this chapter or an order issued under Subsection 31A-37a-201(4) unless:

(1) the special purpose financial captive insurance company consents to the revocation, suspension, amendment, or modification; or

(2) the commissioner shows by clear and convincing evidence that the revocation, suspension, amendment, or modification is necessary to avoid irreparable harm to:

- (a) a special purpose financial captive insurance company; or
- (b) a ceding insurer.

Enacted by Chapter 302, 2008 General Session

31A-37a-203. Reporting related to transactions.

(1) A special purpose financial captive insurance company shall provide the commissioner with a copy of a complete set of executed documentation of an insurance securitization no later than 30 days after the day on which the insurance securitization transaction closes.

(2) Section 31A-37-503 applies to:

- (a) information submitted pursuant to Subsection (1);
- (b) information submitted pursuant to Subsection 31A-37a-201(2); or
- (c) an order issued to a special purpose financial captive insurance company pursuant to Subsection 31A-37a-201(4).

Enacted by Chapter 302, 2008 General Session

31A-37a-204. Prior approval of a change in plan of operation and other transactions.

(1) A special purpose financial captive insurance company may not change its plan of operation without the prior approval of the commissioner.

(2) (a) Subject to Subsection (2)(b), a special purpose financial captive insurance company may not engage in a transaction or series of transactions without the prior approval of the commissioner if the transaction or series of transactions:

- (i) is undertaken to dissolve the special purpose financial captive insurance company; or
- (ii) results in the termination of all or a part of a special purpose financial captive insurance company's business.

(b) A special purpose financial captive insurance company is not required to obtain the prior approval of the commissioner for a transaction or series of transactions described in Subsection (2)(a)(ii) if:

- (i) the transaction or series of transactions is done in accordance with a document or agreement described in the special purpose financial captive insurance company's plan of operation; and
- (ii) the special purpose financial captive insurance company notifies the commissioner prior to the transaction or series of transactions.

(3) A special purpose financial captive insurance company shall notify the commissioner before a change in the legal ownership of a security issued by the special purpose financial captive insurance company.

Enacted by Chapter 302, 2008 General Session

31A-37a-205. Sponsored captives.

In addition to the other provisions of this chapter, this section applies to a sponsored captive insurance company under Chapter 37, Captive Insurance

Companies Act, that has a certificate of authority as a special purpose financial captive insurance company pursuant to this chapter.

(1) A sponsored captive insurance company may have a certificate of authority as a special purpose financial captive insurance company under this chapter.

(2) (a) For purposes of a sponsored captive insurance company having a certificate of authority as a special purpose financial captive insurance company, "general account" means the assets and liabilities of the sponsored captive insurance company not attributable to a protected cell.

(b) For purposes of applying Chapter 27a, Insurer Receivership Act, to a sponsored captive insurance company having a certificate of authority as a special purpose financial captive insurance company, the definition of "insolvency" and "insolvent" in Section 31A-37a-102 shall be applied separately to:

(i) each protected cell; and

(ii) the special purpose financial captive insurance company's general account.

(3) (a) A participant in a sponsored captive insurance company having a certificate of authority as a special purpose financial captive insurance company shall be a ceding insurer, unless approved by the commissioner before a person becomes a participant.

(b) A change in a participant in a sponsored captive insurance company having a certificate of authority as a special purpose financial captive insurance company is subject to prior approval by the commissioner.

(4) Notwithstanding Section 31A-37-401, a special purpose financial captive insurance company that is a sponsored captive insurance company may issue a security to a person not described in Section 31A-37-401 if the issuance to that person is approved by the commissioner before the issuance of the security.

(5) Notwithstanding Section 31A-37a-302, a sponsored captive insurance company having a certificate of authority as a special purpose financial captive insurance company shall:

(a) at the time of initial application for a certificate of authority as a special purpose financial captive insurance company, possess unimpaired paid-in capital and surplus of not less than \$500,000; and

(b) maintain at least \$500,000 of unimpaired paid-in capital and surplus of not less than \$500,000 during the time that it holds a certificate of authority under this chapter.

(6) (a) For purposes of a sponsored captive insurance company having a certificate of authority as a special purpose financial captive insurance company, this Subsection (6) applies to:

(i) a security issued by the special purpose financial captive insurance company with respect to a protected cell; or

(ii) a contract or obligation of the special purpose financial captive insurance company with respect to a protected cell.

(b) A sponsored captive insurance company having a certificate of authority as a special purpose financial captive insurance company shall include with a security, contract, or obligation described in Subsection (6)(a):

(i) the designation of the protected cell; and

(ii) a disclosure in a form and content satisfactory to the commissioner to the

effect that the holder of the security or a counterparty to the contract or obligation has no right or recourse against the special purpose financial captive insurance company and its assets other than against an asset properly attributable to the protected cell.

(c) Notwithstanding the requirements of this Subsection (6) and subject to other statutes or rules including this chapter and Chapter 37, Captive Insurance Companies Act, a creditor, ceding insurer, or another person may not use a failure to include a disclosure described in Subsection (6)(b), in whole or part, as the sole basis to have recourse against:

(i) the general account of the special purpose financial captive insurance company; or

(ii) the assets of another protected cell of the special financial captive insurance company.

(7) In addition to Section 31A-37-401, a sponsored captive insurance company having a certificate of authority as a special purpose financial captive insurance company is subject to the following with respect to a protected cell:

(a) (i) A sponsored captive insurance company having a certificate of authority as a special purpose financial captive insurance company shall establish a protected cell only for the purpose of insuring or reinsuring risks of one or more reinsurance contracts with a ceding insurer with the intent of facilitating an insurance securitization.

(ii) Subject to Subsection (7)(a)(iii), a sponsored captive insurance company having a certificate of authority as a special purpose financial captive insurance company shall establish a separate protected cell with respect to a ceding insurer described in Subsection (7)(a)(i).

(iii) A sponsored captive insurance company having a certificate of authority as a special purpose financial captive insurance company shall establish a separate protected cell with respect to each reinsurance contract that is funded in whole or in part by a separate insurance securitization transaction.

(b) A sponsored captive insurance company having a certificate of authority as a special purpose financial captive insurance company may not sale, exchange, or transfer an asset by, between, or among any of its protected cells without the prior approval of the commissioner.

(8) (a) A sponsored captive insurance company having a certificate of authority as a special purpose financial captive insurance company shall attribute an asset or liability to a protected cell and to the general account in accordance with the plan of operation approved by the commissioner.

(b) Except as provided by Subsection (8)(a), a sponsored captive insurance company having a certificate of authority as a special purpose financial captive insurance company may not attribute an asset or liability between:

(i) its general account and a protected cell; or

(ii) its protected cells.

(c) A sponsored captive insurance company having a certificate of authority as a special purpose financial captive insurance company shall attribute:

(i) an insurance obligation, asset, or liability relating to a reinsurance contract entered into with respect to a protected cell; and

(ii) an insurance securitization transaction related to the obligation, asset, or liability described in Subsection (8)(c)(i), including a security issued by the special

purpose financial captive insurance company as part of the insurance securitization, to the protected cell.

(d) The following shall reflect an insurance obligation, asset, or liability relating to a reinsurance contract and the insurance securitization transaction that are attributed to a protected cell:

(i) a right, benefit, obligation, or a liability of a security attributable to a protected cell described in Subsection (8)(c);

(ii) the performance under a reinsurance contract and the related insurance securitization transaction; and

(iii) a tax benefit, loss, refund, or credit allocated pursuant to a tax allocation agreement to which the special purpose financial captive insurance company is a party, including a payment made by or due to be made to the special purpose financial captive insurance company pursuant to the terms of the tax allocation agreement.

(9) In addition to Section 31A-37a-502:

(a) Chapter 27a, Insurer Receivership Act, applies to each protected cell of a sponsored captive insurance company having a certificate of authority as a special purpose financial captive insurance company.

(b) A proceeding or action taken by the commissioner pursuant to Chapter 27a, Insurer Receivership Act, with respect to a protected cell of a sponsored captive insurance company having a certificate of authority as a special purpose financial captive insurance company may not be the sole basis for a proceeding pursuant to Chapter 27a, Insurer Receivership Act, with respect to:

(i) another protected cell of the special purpose financial captive insurance company; or

(ii) the special purpose financial captive insurance company's general account.

(c) (i) Except as provided in Subsection (9)(c)(ii), the receiver of a special purpose financial captive insurance company shall ensure that the assets attributable to one protected cell are not applied to the liabilities attributable to:

(A) another protected cell; or

(B) the special purpose financial captive insurance company's general account.

(ii) Notwithstanding Subsection (9)(c)(i), if an asset or liability is attributable to more than one protected cell, the receiver shall deal with the asset or liability in accordance with the terms of a relevant governing instrument or contract.

(d) The insolvency of a protected cell of a sponsored captive insurance company having a certificate of authority as a special purpose financial captive insurance company may not be the sole basis for the commissioner to prohibit:

(i) a payment by the special purpose financial captive insurance company made pursuant to a special purpose financial captive insurance company security or reinsurance contract with respect to another protected cell; or

(ii) an action required to make a payment described in Subsection (9)(d)(i).

Amended by Chapter 297, 2011 General Session

31A-37a-301. Formation.

(1) A special purpose financial captive insurance company may be:

(a) incorporated as a stock insurer with its capital divided into shares and held

by its stockholders; or

(b) organized as a manager-managed limited liability company.

(2) A special purpose financial captive insurance company's organizational documents shall limit the special purpose financial captive insurance company's authority to transact the business of insurance or reinsurance to those activities that the special purpose financial captive insurance company conducts to accomplish its purposes as expressed in this chapter.

Enacted by Chapter 302, 2008 General Session

31A-37a-302. Minimum capital and surplus.

(1) The commissioner may not issue a special purpose financial captive insurance company a certificate of authority under this chapter unless it possesses unimpaired paid-in capital and surplus of not less than \$250,000 on the day on which the certificate of authority is issued.

(2) A special purpose financial captive insurance company shall maintain unimpaired paid-in capital and surplus of not less than \$250,000 at all times when having a certificate of authority under this chapter.

Enacted by Chapter 302, 2008 General Session

31A-37a-303. Disposition of assets -- Investments.

(1) A special purpose financial captive insurance company or a person on its behalf shall preserve and administer an asset of the special purpose financial captive insurance company to satisfy the liabilities and obligations of the special purpose financial captive insurance company incident to:

- (a) the reinsurance contract;
- (b) an insurance securitization; and
- (c) an agreement related to Subsection (1)(a) or (b).

(2) In a special purpose financial captive insurance company insurance securitization, a security offering memorandum or other document issued to a prospective investor regarding the offer and sale of a surplus note or other security shall include a disclosure that all or part of the proceeds of the insurance securitization will be used to fund the special purpose financial captive insurance company's obligations to the ceding insurer.

(3) A special purpose financial captive insurance company is not subject to a restriction on investments other than the following:

(a) A special purpose financial captive insurance company may not make a loan to a person other than:

- (i) as permitted under its plan of operation; or
- (ii) as otherwise approved in advance of the loan by the commissioner.

(b) The commissioner may prohibit or limit an investment that threatens the solvency or liquidity of a special purpose financial captive insurance company unless the investment is otherwise approved in:

- (i) the special purpose financial captive insurance company's plan of operation;

or

(ii) an order issued to the special purpose financial captive insurance company pursuant to Section 31A-37a-201.

Enacted by Chapter 302, 2008 General Session

31A-37a-304. Securities.

(1) (a) A special purpose financial captive insurance company may:

(i) subject to the prior approval of the commissioner, account for the proceeds of a surplus note issued by the special purpose financial captive insurance company as surplus; and

(ii) except as provided in Subsection (1)(b), submit for prior approval of the commissioner a periodic written request for authorization to make a payment of interest on or a repayment of principal of a surplus note or other debt obligation issued by the special purpose financial captive insurance company.

(b) (i) The commissioner may not approve a payment described in Subsection (1)(a)(i) if the commissioner determines that the payment would jeopardize the ability of the special purpose financial captive insurance company or another person to fulfill its respective obligations pursuant to a special purpose financial captive insurance company insurance securitization agreement, reinsurance contract, or a related transaction.

(ii) In lieu of approval of a periodic written request for authorization to make a payment of interest on or repayment of principal of a surplus note or other debt obligation issued by the special purpose financial captive insurance company, the commissioner may approve a formula or plan for payment of interest, principal, or both with respect to the surplus note or debt obligation.

(iii) A special purpose financial captive insurance company shall include a formula or plan approved under Subsection (1)(b)(ii) in the special purpose financial captive insurance company's plan of operation.

(2) In addition to Section 31A-37-302, a special purpose financial captive insurance company may not declare or pay a dividend or distribution if the dividend or distribution jeopardizes the ability of the special purpose financial captive insurance company or another person to fulfill the special purpose financial captive insurance company's or other person's respective obligations pursuant to a special purpose financial captive insurance company insurance securitization agreement, a reinsurance contract, or a related transaction.

(3) (a) A special purpose financial captive insurance company security is not subject to regulation as an insurance or reinsurance contract.

(b) An investor in a special purpose financial captive insurance company security or a holder of a special purpose financial captive insurance company security may not be considered to be transacting the business of insurance in this state solely by reason of having an interest in the security.

(c) The following people involved in an insurance securitization by a special purpose financial captive insurance company may not be considered to be an insurance producer or broker, or to be conducting business as an insurer, reinsurer, insurance agency, brokerage, intermediary, advisory, or consulting business solely by virtue of the person's underwriting activities in connection with the insurance

securitization:

- (i) an underwriter's placement;
- (ii) a selling agent; or
- (iii) a partner, commissioner, officer, member, manager, employee, agent, representative, or advisor of a person listed in Subsection (3)(c)(i) or (ii).

Enacted by Chapter 302, 2008 General Session

31A-37a-401. Purchase of reinsurance.

Subject to the prior approval of the commissioner, a special purpose financial captive insurance company may purchase reinsurance to cede the risks assumed under a reinsurance contract.

Enacted by Chapter 302, 2008 General Session

31A-37a-402. Permitted reinsurance.

(1) (a) A special purpose financial captive insurance company may reinsure only the risks of a ceding insurer, pursuant to a reinsurance contract.

(b) A special purpose financial captive insurance company may not issue a contract of insurance or a contract for assumption of risk or indemnification of loss other than a reinsurance contract described in Subsection (1)(a).

(2) Unless otherwise approved in advance by the commissioner, a special purpose financial captive insurance company may not assume or retain exposure to insurance or reinsurance losses for its own account that are not funded by:

(a) proceeds from a special purpose financial captive insurance company insurance securitization;

(b) a letter of credit;

(c) an asset described in Subsection 31A-37a-102(1)(c);

(d) a premium or another amount payable by the ceding insurer to the special purpose financial captive insurance company pursuant to the reinsurance contract; or

(e) a return on investment of an item described in Subsections (2)(a) through (d).

(3) (a) A reinsurance contract shall contain a provision reasonably required or approved by the commissioner.

(b) A requirement described in Subsection (3)(a) shall take into account the laws applicable to the ceding insurer regarding the ceding insurer taking credit for the reinsurance provided under the reinsurance contract.

(4) Subject to the prior approval of the commissioner, a special purpose financial captive insurance company may cede risks assumed through a reinsurance contract to one or more reinsurers through the purchase of reinsurance.

(5) (a) This Subsection (5) applies to a contract or commercial activity that:

(i) relates to or is incidental to a reinsurance contract; and

(ii) is necessary to fulfill the purposes of:

(A) a reinsurance contract;

(B) insurance securitization; and

(C) this chapter.

(b) A special purpose financial captive insurance company may engage in a contract or commercial activity described in Subsection (5)(a) if the contract or commercial activity is:

(i) in the special purpose financial captive insurance company's plan of operation; or

(ii) approved in advance by the commissioner.

(c) A contract or commercial activity described in Subsection (5)(a) includes:

(i) entering into a reinsurance contract;

(ii) issuing a special purpose financial captive insurance company security;

(iii) complying with a term of a contract or security described in Subsection

(5)(c)(i) or (ii);

(iv) entering into:

(A) a trust;

(B) a guaranteed investment contract;

(C) a swap;

(D) a derivative transaction;

(E) a tax transaction;

(F) an administration transaction;

(G) a reimbursement transaction; or

(H) a fiscal agent transaction;

(v) complying with a trust indenture, reinsurance, or retrocession; and

(vi) another agreement necessary or incidental to effect an insurance

securitization in compliance with:

(A) the special purpose financial captive insurance company's plan of operation;

and

(B) this chapter.

(6) Unless otherwise approved in advance by the commissioner, a reinsurance contract may not contain a provision for payment by the special purpose financial captive insurance company in discharge of its obligations under the reinsurance contract to a person other than the ceding insurer or any receiver of the ceding insurer.

(7) A special purpose financial captive insurance company shall notify the commissioner immediately of an action by a ceding insurer or another person to foreclose on or otherwise take possession of collateral provided by the special purpose financial captive insurance company to secure an obligation of the special purpose financial captive insurance company.

Amended by Chapter 349, 2009 General Session

31A-37a-501. Suspension and revocation.

(1) (a) The commissioner shall notify a special purpose financial captive insurance company not less than 30 days before suspending or revoking the special purpose financial captive insurance company's certificate of authority pursuant to Section 31A-37-505.

(b) In the notice required by Subsection (1)(a) the commissioner shall state the basis for the suspension or revocation.

(c) The commissioner shall give a special purpose financial captive insurance

company described in this Subsection (1) an opportunity for a hearing pursuant to Title 63G, Chapter 4, Administrative Procedures Act.

(2) Notwithstanding Subsection (1) and Title 63G, Chapter 4, Administrative Procedures Act, the commissioner is not required to provide prior notice or a hearing if the grounds for suspension or revocation of a special purpose financial captive insurance company's certificate of authority pursuant to Section 31A-37-505 relate primarily to:

(a) the financial condition or soundness of the special purpose financial captive insurance company; or

(b) a deficiency in the assets of the special purpose financial captive insurance company.

Enacted by Chapter 302, 2008 General Session

31A-37a-502. Delinquency.

(1) Except as otherwise provided in this section, Chapter 27a, Insurer Receivership Act, applies to a special purpose financial captive insurance company.

(2) Upon an order of supervision, rehabilitation, or liquidation of a special purpose financial captive insurance company, the receiver shall manage the assets and liabilities of the special purpose financial captive insurance company pursuant to this chapter.

(3) An amount recoverable by the receiver of a special purpose financial captive insurance company under a reinsurance contract may not be reduced or diminished as a result of the entry of an order of conservation, rehabilitation, or liquidation with respect to a ceding insurer, notwithstanding a contract or other documentation governing the special purpose financial captive insurance company insurance securitization.

(4) The following applies notwithstanding Chapter 27a, Insurer Receivership Act, or another law of this state:

(a) An application, petition, a temporary restraining order, or injunction issued pursuant to Chapter 27a, Insurer Receivership Act, with respect to a ceding insurer does not prohibit the transaction of business by a special purpose financial captive insurance company, including:

(i) a payment by a special purpose financial captive insurance company made with respect to a special purpose financial captive insurance company security; or

(ii) an action or proceeding against a special purpose financial captive insurance company or its assets.

(b) (i) Subject to Subsection (4)(b)(ii), the commencement of a summary proceeding with respect to a special purpose financial captive insurance company and an order issued by the court in the summary proceeding may not prohibit:

(A) a payment by a special purpose financial captive insurance company; or

(B) the special purpose financial captive insurance company from taking an action required to make a payment described in this Subsection (4)(b)(i).

(ii) Subsection (4)(b)(i) applies only if the payment is made:

(A) pursuant to a special purpose financial captive insurance company security or reinsurance contract; and

(B) consistent with the special purpose financial captive insurance company's

plan of operation and any order issued to the special purpose financial captive insurance company pursuant to Section 31A-37a-201.

(c) A receiver of a ceding insurer may not void a nonfraudulent transfer by a ceding insurer to a special purpose financial captive insurance company of money or other property made pursuant to a reinsurance contract.

(d) A receiver of a special purpose financial captive insurance company may not void a nonfraudulent transfer by the special purpose financial captive insurance company of money or other property:

(i) (A) made to a ceding insurer pursuant to a reinsurance contract; or

(B) made to or for the benefit of a holder of a special purpose financial captive insurance company security with respect to the special purpose financial captive insurance company security; and

(ii) made consistent with the special purpose financial captive insurance company's plan of operation and an order issued to the special purpose financial captive insurance company pursuant to Section 31A-37a-201.

(5) (a) Except to fulfill an obligation under a reinsurance contract and notwithstanding another provision of this chapter, Chapter 37, Captive Insurance Companies Act, or other laws of this state, the assets of a special purpose financial captive insurance company may not be consolidated with or included in the estate of a ceding insurer in a delinquency proceeding against the ceding insurer pursuant to this chapter for any purpose including a distribution to a creditor of the ceding insurer.

(b) This Subsection (5) applies to assets that include an asset held in trust:

(i) on a funds-withheld basis; or

(ii) under another arrangement to secure the special purpose financial captive insurance company's obligations under a reinsurance contract.

Enacted by Chapter 302, 2008 General Session